

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

9761
03-4-09
FILED
ORIGINAL

In re Application of)

Laramie Mountain Broadcasting, LLC)

For Minor Amendment to Pending)
Application for Construction Permit for)
Station, KUSZ(FM), Laramie, Wyoming)

File No. BPH-20080312ADR

Facility ID No. 9761

FILED/ACCEPTED

FEB 27 2009

Federal Communications Commission
Office of the Secretary

To: Secretary, Federal Communications Commission
Attn: The Chief, Audio Division, Media Bureau

INFORMAL OBJECTION

White Park Broadcasting, Inc. ("White Park"), by its attorneys, hereby files this Informal Objection to the above-referenced application filed by Laramie Mountain Broadcasting, LLC ("LMB"), the licensee of KUSZ(FM), Laramie, Wyoming ("KUSZ"), in which LMB seeks to change KUSZ's community of license from Laramie, Wyoming to Loveland, Colorado (the "Modification Application"). KUSZ's proposed move from Laramie, Wyoming to Loveland, Colorado does not further any of the Commission's FM allotment priorities and the Modification Application must therefore be dismissed. In support thereof, White Park states as follows.

In Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services, Report and Order, 21 FCC Rcd 14212 (2006) (the "*FM Allotment R&O*"), the Commission stated that applicants seeking community of license changes must provide "a narrative showing that the proposed community of license change represents a net service benefit under the Section 307(b) priorities and policies [the Commission has] used since 1982." *FM Allotment R&O* at 14218 (citing *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982) ("*FM Assignment Policies*")). The

Commission's FM priorities, as set forth in the *FM Assignment Policies*, are as follows: (1) first aural service; (2) second aural service; (3) first local service; and (4) other public interest matters. See *FM Assignment Policies* at 91-92. Relocation of KUSZ to Loveland would not constitute a first aural service, a second aural service or a first local service for Loveland, thereby excluding consideration of the Modification Application vis-à-vis Priorities 1, 2 or 3.

Accordingly, the only basis upon which LMB is entitled to secure grant of the Modification Application is under Priority 4, relating to "other public interest matters." As shown below, LMB's public interest claims for KUSZ's proposed relocation to Loveland are without merit and its Modification application must be denied.

In the Modification Application, LMB proposes modifying KUSZ's community of license from Laramie, Wyoming to the more populous community of Loveland, Colorado, and defends this proposed relocation from a smaller, more rural community to a larger, more urban community, as a more efficient usage of spectrum. LMB attempts to buttress its case by noting that Laramie, with a 2000 Census population of 27,204 persons, is the community of license for more broadcast services than Loveland, with a 2000 Census population of 50,608 persons.¹ LMB further points to 2006 population figures to show that Loveland is growing at a faster rate than Laramie.

LMB's argument is unconvincing. In making its case for KUSZ's move from Laramie to Loveland, LMB neglects to mention that Loveland's growth as a city, as well as the attractiveness of its radio market to LMB, are both tied to Loveland's proximity to Denver, Colorado. As a satellite community to Denver, Loveland is already an extraordinarily well-

¹ Laramie is the community of license for 2 AM stations (KHAT and KOWB), 4 commercial FM stations (KCGY, KARS-FM, KIMX and KRQU) not including KUSZ, and 5 non-commercial FM stations (KUWR, KTDX, KAIW, KUWL and KUWY). Loveland is the community of license for 1 AM station (KPIO), 1 commercial FM station (KTRR) and 1 non-commercial FM station (KXWA).

served radio market. Loveland may have only one commercial FM station, one non-commercial FM station and one AM station licensed to it, but it nonetheless receives primary service from 59 radio broadcast services. *See* Modification Application at Exhibit E-3 (noting Loveland receives 60 dBu service or greater from 21 commercial FM stations and 3 non-commercial FM stations and .5 mV/m service or greater from 35 AM stations). Thus, while Laramie may have more local stations actually licensed to it, Laramie cannot compete with Loveland in terms of the sheer number of broadcast services available to residents – Loveland already receives double the number of broadcast radio services as Laramie.

Despite LMB's claims in the Modification Application, the public interest would hardly be served by dropping one more radio broadcast service into the Loveland market. The only interest served by this proposal is LMB's interest in gaining access to the Denver radio market. LMB's attempt to paint Loveland as a community in need of additional broadcast services is disingenuous, and, more importantly, lacking in merit under Priority 4 of the Commission's FM allotment priorities.

The required gain/loss analysis of KUSZ's proposed relocation to Loveland is conspicuously missing from the Modification Application. The absence of this study is itself a basis for denying the Modification Application.

While KUSZ would surely gain a number of listeners by relocating to Loveland (and providing one more radio service to listeners that already receive dozens of radio signals), how many listeners would lose KUSZ, and how many radio services would those dropped listeners still have access to? LMB only addresses these issues tangentially by tallying up the remaining radio services authorized to Laramie.

LMB's tally of stations authorized to each community does not constitute meaningful evidence for purposes of Priority 4 of the Commission's allotment priorities. In order to

accurately gauge the public interest implications of its proposal, LMB should be required to specifically address losses to Laramie and surrounding areas, including the possible creation of any white or gray areas in the rural communities outside Laramie's city limits. LMB's Section 307(b) showing in the Modification Application is misleading and incomplete; as such, it fails to provide a sufficient basis for approving KUSZ's relocation to Loveland, Colorado. Accordingly, the Commission should dismiss LMB's Modification Application.

WHEREFORE, White Park Broadcasting, Inc. respectfully requests that the Media Bureau dismiss and/or deny Laramie Mountain Broadcasting, LLC's application to change the community of license of Station KUSZ(FM) from Laramie, Wyoming to Loveland, Colorado.

Respectfully submitted,

WHITE PARK BROADCASTING, INC.

By: _____

Barry A. Friedman
Thompson Hine LLP
1920 N Street, N.W.
Suite 800
Washington, D.C. 20036
(202) 331-8800


Dated: February 27, 2009

CERTIFICATE OF SERVICE

I, Barry A. Friedman, hereby certify that I have served on this 27th day of February, 2009, a copy of the foregoing **INFORMAL OBJECTION** on the following parties by first-class mail, postage pre-paid:

A. Wray Fitch, III, Esq.
Gammon & Grange P.C.
8280 Greensboro Drive
McLean, Virginia 22102-3807

Mr. Peter Doyle *
Audio Division
Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554



Barry A. Friedman

*By Hand